

Filed 1/29/19 In re S.C. CA2/2

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

In re S.C. et al., Persons Coming
Under the Juvenile Court Law.

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

F.C.,

Defendant and Appellant.

B288382
(Los Angeles County
Super. Ct. No. CK55804)

APPEAL from orders of the Superior Court of Los Angeles County. Kristen Byrdsong, Juvenile Court Referee. Affirmed.

Robert McLaughlin, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, Kristine Miles, Acting Assistant County Counsel and David Michael Miller, Deputy County Counsel, for Plaintiff and Respondent.

In this appeal, F.C. (father) challenges the juvenile court's denial of his petition under Welfare and Institutions Code section 388¹ in which he sought further reunification services as well as unmonitored visitation with respect to S.C., A.C., and R.C. (collectively minors).² In addition, father challenges the juvenile court's order terminating his visitation.

We find no error and affirm.

FACTS

Father's Neglect

On January 2, 2014, the Department of Children and Family Services (Department) received a referral of neglect alleging that father left D.E., who was 13 years old, alone to care for the minors. According to the reporting party, father had been out of prison for a year and a half. He brought drug addicts into the garage of the family home and they used drugs together. The garage always smelled like marijuana. Also, the reporting party stated: R.C. cried all the time. M.C. (mother) was always in and out of the home. Both mother and father were users of methamphetamine.

Jurisdiction; Subsequent Events

The minors became wards of the juvenile court after it sustained a petition under section 300, subdivision (b) alleging father's amphetamine and methamphetamine use placed the minors at risk of harm. The juvenile court ordered them removed from father's care and placed them in mother's care under the

¹ All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

² The dependency proceedings below also pertained to D.E., the older half-sibling of the minors. D.E. is not a subject of this appeal. S.C. was born in 2008, A.C. in 2010, and R.C. in 2013.

supervision of the Department. Father was ordered to participate in services to include random drug testing and individual counseling for “case issues,” including substance abuse. If any test was missed or positive, he was required to participate in a full drug rehabilitation program. He was granted monitored visitation with the proviso that mother could not be the monitor.

Father tested positive for methamphetamine on January 4, 2014. He denied that he used drugs and claimed that there had been an error at the lab.

In mid-May 2014, father tested positive for amphetamine as well as methamphetamine. Subsequently, he missed his drug test in late May, and also all drug tests in June, July, and August 2014.

Father’s visits were cancelled.

In private interviews, A.C. informed a social worker that father still resided in the family home. On one occasion, she said father was yelling at mother the night before, and said that mother hit the wall with a bat because she was so angry. Mother denied father resided in the family home but admitted she hit a wall with a baseball bat because she was upset at father. On a separate occasion, A.C. stated, “[M]y dad hits my mom but she does not cry. She just kisses him.” A social worker noted a two-inch bruise on mother’s arm. She claimed she received the bruise in an altercation with father’s new girlfriend after the woman came to mother’s home.

In early September 2014, the Department detained the children from mother’s care because she tested positive for methamphetamines and was allowing father to frequent the family home. After briefly being placed in three separate foster

homes, the minors were all placed in one foster home together. Mother and father had weekly monitored visits.

The Section 342 Petition

The Department filed a section 342 petition under section 300, subdivision (b). It alleged the minors were placed at risk of harm due to mother's substance abuse, and because she allowed father to have access to the minors in violation of a juvenile court order permitting him to have monitored visits only if mother was not the monitor.

The Department's Reports

In October 2014, the Department reported that father completed a parenting course. He had enrolled in Latino Family Alcohol and Drug Services but was discharged less than a month later for yelling at his counselor. Father had negative drug tests in October 2014 and November 2014. He then missed six consecutive tests before testing negative again in December 2014. He was openly residing in the family home with mother. On October 31, 2014, the juvenile court awarded mother unmonitored visitation with the children in a public setting.

In January 2015, the Department reported that father was still residing in the family home. He did not attend or complete his visits with the minors for a month and a half. He told a social worker that he did not like the monitor, and it was hard for him to get to visits on time. A.C. and S.C. reported multiple times that father was attending mother's unmonitored visitations.

The Department also reported the following: In mid-November, father left a visit early after he got upset with mother, and after the monitor told mother that she would have to leave. The monitor was concerned for mother's safety. Mother indicated that father was "looking for any excuse to break up with her."

After father did not show up for a monitored visit in mid-December, the monitor transported the minors to a mall for a visit with mother. Mother arrived with a fractured arm, she was limping, and she had a slightly bruised face. Due to her injuries, she said that she could visit for only an hour. The family's landlord indicated that mother and father had fights and other tenants complained about the fights. The landlord had seen mother with scratches, and said "I know [father] hits her[.]" Also according to the landlord, the minors and other tenants were afraid of father. The landlord stated that "she needs to stay away from him. She could get killed. Every time she is hurt she always says how she forgives him and somehow makes it her fault."

The juvenile court reverted mother's visitation back to monitored.

In March 2015, the Department reported that mother and father were in a relationship until early February of that year, and that they were homeless. Mother informed the Department that she separated from father and did not want him to know her location. She no longer wanted to visit the minors at the same time as father, and she wanted to explore the option of residing in a domestic violence shelter. On another occasion, mother contacted the Department to inform them father found out where she was, asked that the Department not leave any messages on her phone, and stated if father found out she wanted to leave him it would "set him off." Father continued missing drug tests. The one time he did submit to a drug test, he tested positive for methamphetamine.

Removal from Mother's Care; Modification of Father's Case Plan

On March 6, 2015, the juvenile court sustained the section 342 petition, removed the children from mother's care, ordered family reunification services, and set a six-month review hearing. Father's case plan was modified to include a full drug/alcohol program with testing, a parenting course, and anger management classes. Mother and father were both granted monitored visitation with the condition that they were not to attend the same visits.

The Department's Reports

In a status review report, the Department reported that the minors were placed together in a foster care. When problems arose, S.C. and A.C. were placed together in a new foster home while R.C. was placed in a different new foster home. The parents were reportedly homeless and living together. Mother briefly stayed in a domestic violence shelter.

Mother described an incident where father yelled at her while she was driving, grabbed the steering wheel, and tried to shift the gears. In addition, she described incidents where father punched her in the face and kicked her. In April 2015, a social worker asked father if mother and he were working on their domestic violence issues in counseling and father stated, "What domestic violence? I was never ordered to do domestic violence." During the review period, social workers observed bruising on mother's face. Father denied any domestic violence, stated mother "spreads lies," and claimed mother "plays the victim." In contrast, in May 2015, mother stated that father hits her. Her counselor reported that mother had stitches in her arm due to an injury inflicted by father.

Mother described father as unstable and said she wanted a restraining order. S.C. stated that she saw bruises on mother during a visit and suspected father hit her because “daddy always hits mom.” S.C. further stated that father spansks her. While she was willing to talk to him on the phone, she did not want to visit him.

In August 2015, the Department reported that between March 10, 2015, and August 7, 2015, father tested negative 13 times, missed seven drug tests, and once tested positive for methamphetamine. He had completed phase one of his substance abuse program and was in phase two. Per a counselor, father attended 10 of 26 sessions of his anger management program, and his overall attendance was consistent despite random absences. That same counselor said father had remained adamant that he never perpetrated violence toward mother. Father continued to deny that he had a substance abuse problem.

Father was frequently seen in the general area during mother’s scheduled visits. His own visits with the minors were inconsistent. The minors’ caregivers declined to monitor father’s visits due to his rude and aggressive behavior. He was described as overly emotional with the minors. Father would attempt to have “deep conversations” with the minors and got upset when they wanted to play. During one visit, father told the minors he may go live with his sister and might no longer visit them.

Father’s phone calls with the minors were inconsistent and sometimes emotional. On a call in July 2015, father was emotional and slurred his speech, and the social worker said he did not sound like himself. The next day, father tested positive for methamphetamine.

Six-Month Review Hearing

At the six-month status review hearing, the juvenile court extended the parents' reunification services.

The Department's Reports

The Department reported that parents were homeless and refused to disclose where they were staying. Father completed a six-month outpatient drug treatment program, an anger management program, and a parenting course. Father did not enroll into aftercare nor did he obtain a sponsor. Moreover, he continued to miss drug tests and test positive for methamphetamine but continued to deny that he had a substance abuse problem. Despite completing an anger management program, father's behavior did not improve. He continued to become easily irritated, and his anger escalated towards the Department, his children, and the caretaker when he disliked something that was said to him. The caretaker refused to supervise father's visits due to his rude and disrespectful behavior.

Father remained "overly emotional with [the minors] during the visits and [got] upset if [they did] not listen to him." In January 2016, S.C. said she did not want to return home to father's care. Father continued his aggressive comments during in-person visits as well as on phone calls. At the end of one visit, he ignored S.C. when she attempted to hug him. Father made S.C. and A.C. feel guilty during phone calls with his tone and sarcastic comments. Father expressed anger toward them when they did not want to speak with him on the phone. He failed to maintain consistent phone calls with R.C.

In January 2016, the juvenile court set the review hearing for a contest. For the contested hearing, the Department

reported “father continue[d] to become angry and inappropriate in the presence of the children during visits and also during phone conversations with [the] children.” It stated that father was “unpredictable during visits” and caused S.C. and A.C. to “feel very nervous and worried” about visiting him. During one visit, S.C. had an “emotional meltdown” after father whispered in her ear. She started screaming at him not to look at her, and threw trash at him. S.C. claimed “Daddy’s mean to me.” During the same visit, father was visibly frustrated and put R.C. down in an aggressive manner before telling a social worker he was unable to handle the minors. Due to father’s aggressive behavior, his visit was terminated.

A.C.’s and S.C.’s therapist recommended suspending father’s visits because they were suffering anxiety due to father’s behavior. The therapist sent letters to the Department explaining that the two girls did not want to visit or even talk to father. A.C. was experiencing various symptoms of anxiety such as becoming emotional, crying easily, being irritable, wetting her pants, having nightmares, and engaging in noncompliant behavior. S.C. had the same symptoms. She reported that her visits with father “make her feel sad and remind her of the abuse she witnessed.” For both of the girls, the symptoms were causing impairments in their functioning at home and school and with their social interactions.

Termination of Father’s Reunification Services

On March 7, 2016, the juvenile court found father was in partial compliance with his case plan, and that he had not made substantial progress. It terminated his family reunification services. The juvenile court then ordered the children to return to the care of mother under the Department’s supervision. In

addition, the juvenile court suspended father's visits for a six-week period, then ordered visits to resume at one time per week thereafter.

Section 387 Petition

In March 2016, the Department filed a section 387 petition requesting the minors be detained from mother due to allegations that she could not provide safe and appropriate care to the minors because she had failed to secure appropriate housing, and because father was in the vicinity of mother's residence. On the same date the juvenile court vacated its home-of-parent mother order and detained the minors.

The Department's Reports; the No Contact Order

Mother and father both reported they moved to Northern California. The Department and the minors suspected the parents were still together based on the nature of the monitored phone calls and the fact father was frequently seen in the vicinity of mother's visits. Mother informed the Department that she was married to father but no longer in a relationship with him.

After almost two months of suspended visits with S.C. and A.C., father had a monitored visit with all three children on April 30, 2016. At first, father was reported to have engaged with the children appropriately. However, at the end of S.C.'s and A.C.'s court-ordered one-hour visit, father became upset. He was told he could continue visiting R.C. for an additional one hour and 45 minutes. However, father opted to cancel the remainder of the visit, became emotional, and started to cry. Father's emotional episode prompted a negative reaction from all three children.

On May 16, 2016, D.C.'s caretaker reported his concern for mother's safety after hearing a domestic violence altercation

between the parents. During a monitored phone call between D.C. and mother, the caretaker heard father in the background. Then mother stated, “[P]ull over motherfucker,” before the call terminated. Mother called the caretaker back an hour later, claiming father showed up unexpectedly and she called law enforcement.

On May 17, 2016, the juvenile court ordered mother and father “not to have any contact with each other.”

In June 2016, mother attempted to rent a home in Northern California. The real estate agent identified father as being present during her meeting with mother, but mother denied the allegation. The owner decided not to rent the home to mother due to her dishonesty.

Also in June 2016, S.C.’s and A.C.’s caregivers saw mother and father together prior to one of mother’s scheduled monitored visits with the minors.

Hearing on the Section 387 Petition

The juvenile court sustained the section 387 petition. Soon after, it terminated mother’s reunification services and set a section 366.26 hearing to select a permanent plan for the minors.

The Department’s Reports

In November 2016, the Department prepared a report for the children’s section 366.26 selection and implementation hearing. Adoption was identified as the permanent plan for the minors.

S.C.’s and A.C.’s therapist provided updated letters stating the two girls’ anxiety symptoms continued, both children felt “sad and scared” during visits with father, and neither child wanted to visit or talk to father.

In January 2017, the Department reported father was “inconsistent with visiting the [minors].” The frequency of the visits changed from weekly to every other week “due to the visits not being appropriate[.]” The caretakers no longer wanted to monitor mother’s visits due to fearing for their own safety after mother showed up to a visit with bruises on her face and arms and looked aggressively at the caretakers. S.C. only visited father one time. She stated he said “mean words” and she felt “sad.” A.C. visited father less than five times. Father’s behavior continued to be “unpredictable.” A social worker cancelled father’s monitored phone calls with S.C. and A.C. because they did not want to talk to him on the phone.

Father’s Section 388 Petition

In June 2017, father filed a section 388 petition, requesting the juvenile court “[r]einststate Father’s family reunification services with unmonitored visits.” Father claimed he was addressing the case issues through weekly NA/AA meetings and individual counseling. Regarding the children’s best interest, father stated he was “working hard in all programs to ensure that he is addressing all issues that brought this case to [the Department’s] attention. Father is working on himself to be a better father for all of his children by attending these classes weekly.” Attached to the petition was a letter from Homeboy Industries stating that he had been participating in AA/NA meetings, and had completed six individual sessions and six group sessions. The counselor who wrote the letter stated, “[Father] has been attentive to his weekly scheduled one-on-one counseling sessions. In my observations[,] [father] continues to work on his sobriety [and] . . . has demonstrated personal growth. He also continues to work to meet all requirements for our

program policy. Client continues to gain responsibilities for recovery.”

The Department’s Reports

In July 2017, the Department updated the juvenile court on father’s visitation. It had been decreased to twice per month starting August 2016. Then in February 2017, father’s visits were reduced to one time per month.

S.C. elected not to attend any visitation. In February 2017, she stated, “I don’t ever want to talk to him. I don’t want to see him either.” A.C. only visited father one time, in January 2017. Months later, a social worker asked if A.C. wanted to see or talk to father, she said, “No thank you. I get sad. He’s been a naughty dad.”

Father spoke with R.C. daily over the phone. During visits, father played, read books, and took R.C. to the bathroom. R.C. was happy to see father.

A social worker asked S.C. and A.C. what they thought about reunifying with father. S.C. stated, “I wouldn’t like to live with [father]. He cusses and hits us.” A.C. said, “He makes poor decisions. I wouldn’t feel safe with him.” When the social worker met with father and asked what reunification services should be reinstated, he said that he wanted to “get another opportunity,” and also said, “I know that I messed up. The termination of my services made me realize how my actions have an effect on the kids.” The social worker asked what he was referring to, and he said it was using drugs and being loud. At the time, he said he supported himself by drawing/painting for money, and that he was living in different places.

S.C.’s and A.C.’s therapist provided updated letters stating that they no longer wanted to see or talk to the parents because

visits and phone calls made them “sad and scared.” A.C. additionally feared father would find her and hurt her and her siblings. Both children exhibited an increase in anxiety symptoms and their therapy focused on managing their emotional responses.

S.C. and A.C. informed a social worker they did not feel safe with father and did not want to return to his care.

In October 2017, the Department reported a paternal aunt was committed to adopting S.C., A.C., and R.C. The Adoption Support Family Act (ASFA) home assessment was approved, and the Department was in the process of arranging the children to be moved to the paternal aunt’s home. The juvenile court authorized the minors to travel to see paternal aunt and ordered her not to allow the minors to have contact with father. Before the visit, S.C. had a nightmare that father showed up at paternal aunt’s home. After the visit, S.C. and A.C. indicated they had a good time, and that they were excited about living with the paternal aunt, especially because R.C. would be living in the same home.

The Contested Hearing

On October 23, 2017, S.C. was eight years old. She testified she was scared of father, and that she witnessed domestic violence between father and mother. S.C. was happy about the idea of living with the paternal aunt. A.C. testified she was seven years old and stopped visiting father when she was six years old. She also stopped visiting mother because her sister, S.C., stopped visiting. Initially, A.C. stated she was not afraid of father, then stated she was afraid of him “sometimes.”

The juvenile court received a letter from a drug counselor at Homeboy Industries stating that father completed a nine-

month program and was continuing in after care services. The counselor stated that he had been monitoring father's weekly AA/NA meetings and his treatment. Father completed 10 individual sessions and attended 35 group sessions from June 2, 2017, to August 14, 2017. According to the counselor, father had been consistent with his attendance, and the counselor had seen "lots of personal growth in [father's] responsibilities for his recovery. He will continue participating with our program. We are willing to continue assisting [father] with his after care program as part of his support."

A church pastor submitted a letter attesting that father "continues to be an active member at Brand New Life Christian Center in good standing." The pastor stated that he "has become a positive influence and role model[.]" Further, the pastor stated, "We are continuing to witness a transformation in [father's] life[.]"

Father submitted a pay stub indicating that he had worked 16 hours for a construction company in October 2017 and had earned \$192.

Following the presentation of evidence, the Department argued that the section 388 petition should be denied and the juvenile court should deny the parents visitation because it would be detrimental to the minors.

The juvenile court denied the section 388 petition. When ruling, the juvenile court stated, "While the [juvenile court] does commend father on his progress with substance abuse counseling and individual counseling and also being employed, the . . . domestic violence has failed to be addressed by both parents, as they continue to be with each other and less than truthful about seeing each other. [¶] The [juvenile court] finds that the

first prong is not met. And as to the second prong, . . . the [juvenile court] does not find it is in the best interest given [the minors'] current status, and the fact they are about to be placed with the paternal aunt[.]”

Next, the juvenile court stated, “[B]ased on father’s inappropriate conduct, missed visits, fighting with caregivers, scaring his children, being inappropriate, the [minors] not even feeling they can express themselves with father about their fears without being retaliated against, the [juvenile court] does make a detriment finding as to father’s visits.”

Father appealed.

DISCUSSION

I. The Section 388 Petition.

Pursuant to section 388, a parent can petition the juvenile court to modify a dependency order on the grounds that there are changed circumstances or new evidence, and that it would be in the best interests of a ward. (*In re Jasmon O.* (1994) 8 Cal.4th 398, 415–416.) Absent an abuse of discretion, the juvenile court’s ruling on a section 388 petition will stand. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318.) Upon review, we conclude that the juvenile court ruled within its discretion because father failed to establish changed circumstances between March 2016 and October 2017.

Though he claims that he fully resolved his substance abuse problem—the reason for the initial dependency petition—the claim fails. He points to evidence he completed a substance abuse program, he was going to an aftercare program, he was participating in AA/NA meetings, he was in good standing at his church, and he earned money at a job. This evidence suggests a possibility that father changed, but it does not, by itself, establish

more. Significantly, father failed to offer evidence of drug testing during the period in question. Without that, he failed to establish by a preponderance of the evidence that he successfully resolved his substance abuse problem because there is no evidence he was drug free. (*In re A.A.* (2012) 203 Cal.App.4th 597, 611–612 [the petitioner must establish grounds for relief by a preponderance of the evidence].) This is especially true given that he had a history of missing drug tests and testing positive for amphetamines and methamphetamines while he was receiving reunification services, and given that an unjustifiably missed test is considered a dirty test. (*In re Kadence P.* (2015) 241 Cal.App.4th 1376, 1384.) Moreover, neither he nor his counselor disclosed what step he was on in his AA/NA 12-step program. There is no evidence that father ever admitted that he has a substance abuse problem. Instead, the evidence establishes a history of father using drugs but denying his substance abuse while in treatment programs. Nothing in the record suggests that the trend ever changed.³

³ We acknowledge that the juvenile court based its decision on domestic violence, which was not the basis of dependency jurisdiction. To the degree the juvenile court abused its discretion by considering whether there were changed circumstances regarding domestic violence rather than substance abuse, we note the following section 388 precedent. “We typically apply a harmless-error analysis when a statutory mandate is disobeyed, except in a narrow category of circumstances when we deem the error reversible per se. This practice derives from article VI, section 13 of the California Constitution, which provides: ‘No judgment shall be set aside, or new trial granted, in any cause . . . for any error as to any matter of procedure, unless, after an examination of the entire cause, including the evidence, the court shall be of the opinion that the error

All other issues are moot.

II. Visitation.

A juvenile court's visitation orders are reviewed for an abuse of discretion or for sufficiency of the evidence, depending on the precedent. (*In re Brittany C.* (2011) 191 Cal.App.4th 1343, 1356 [abuse of discretion]; *In re Mark L.* (2001) 94 Cal.App.4th 573, 577 [substantial evidence].) Regardless of the standard of review, we find no error.

Pending a permanency hearing pursuant to section 366.26, a juvenile court "shall continue to permit the parent . . . to visit the child . . . unless it finds that visitation would be detrimental to the child." (§ 366.21, subd. (h).) [¶] "[T]he risk of detriment must be *substantial*, such that [the proposed action] represents some danger to the child's physical or emotional well-being.' [Citation.]" (*In re A.J.* (2015) 239 Cal.App.4th 154, 160.) The purpose of a detriment inquiry is to ensure the child's physical and emotional well-being. (*In re Matthew C.* (2017) 9 Cal.App.5th 1090, 1102.)

The record establishes that father has a history of substance of abuse, volatile interactions with mother, and refusing to obey the juvenile court's orders. Also, he was inappropriate, overly emotional, and aggressive during visits and

complained of has resulted in a miscarriage of justice." (*In re Jesusa V.* (2004) 32 Cal.4th 588, 624; *B.B. v. Superior Court* (2016) 6 Cal.App.5th 563, 572.) "Reversal is justified 'only when the court, 'after an examination of the entire case, including the evidence,' is of the 'opinion' that it is reasonably probable that a result more favorable to the [petitioning] party would have been reached in the absence of the error.'" (*Ibid.*) Applying that standard, any error in this case was harmless.

phone calls with the minors. On one occasion, he tested positive for methamphetamines and amphetamines the day after a phone visit in which he was emotional and the monitoring social worker said he did not sound like himself. He displayed an inability or unwillingness to respect caregivers and, reportedly, S.C. and A.C. were afraid of father and suffered anxiety due to his behavior during visitations and calls. His visits were limited as a result. The evidence established that continued visitation would place the minors of substantial risk of emotional harm. Though there is evidence that father had better interactions with R.C. than S.C. and A.C, that evidence does not countermand the risk posed by his volatility, inappropriate conduct and his history of substance abuse.

DISPOSITION

The orders are affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

_____, J.
ASHMANN-GERST

We concur:

_____, P. J.
LUI

_____, J.
HOFFSTADT